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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal NO. 76 **of 2005**

Single Bench

APPELLANT/ PLAINTIFFS	:	Chandrika Prasad Ilias Lalji, aged about 69 years, s/o. Bhagwan Charan, resident of Gram Challan, Tah. Mungeli, Distt. Bilaspur (C.G.)

VERSUS

RESPONDENTS/ DEFENDANTS	1. Jodhu aged about 57 years, S/o. Nohar, R/o. Village Nirjam, Tah. Mungeli, Distt. Bilaspur (C.G.)
	2. Jyotin Bai, aged about 58 years, w/o. Dhanukram Sahu, R/o. Village-Mohatra, Tah. Navegarh, Distt. Durg (C.G.)
	3. State of Chhattisgarh. Through Collector Bilaspur.

21/2/05 MB Samele 19-1-05

B.R. No.
Presented by
dated

SECOND APPEAL U/S 100 OF THE CODE OF CIVIL PROCEDURE

MBande 8/02/05

(20)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 76/2005

Appellant : Chandrika Prasad @ Lalji

Versus

Respondents : Jodhu and others

Smt. Anju Ahuja learned Counsel for the appellant.

JUDGMENT

(Passed on 10-3-2005)

The instant appeal has been preferred by the appellant against the judgment and decree dated 06-12-2004 passed by II Additional District Judge, Mungeli in First Appeal No. 10-A/2003 by which the judgment and decree dated 03-09-2003 passed by Civil Judge Class I, Mungeli dismissing the Civil Suit No. 81-A/1994 filed for declaration of title and perpetual injunction has been confirmed.

2. Case of the plaintiff before the trial Court was that from the date of Chakbandi in the year 1959-60 he was in peaceful possession of the suit property claiming the same to be his own, continuously without any interruption and was cultivating the same since then by dividing it into three separate plots for last 34 years and as such he has perfected his title by adverse possession. Earlier to the filing of the suit, he discovered that the suit property was recorded in the name of defendant Nos.1 and 2

and they are threatening him to dispossess from the suit property and as such the suit for declaration and perpetual injunction was filed by the plaintiff.

3. The defendants in their written statement denied the plaint allegations and stated that they are in possession of the suit property since 1959-60. However, in the year 1995, the land was attached by the Sub Divisional Officer, Mungeli under Section 145 of the Cr.P.C. at the instance of the plaintiff and before that they were in possession of the same. It was categorically denied that the plaintiff was ever in possession of the suit property.

4. On the basis of pleadings of both the parties, the issues were framed and learned trial Court dismissed the suit by recording a finding that the plaintiff has failed to prove that he has perfected his title over the suit property by adverse possession and as such he is not entitled for perpetual injunction.

5. The findings of both the Courts below are based on the pleadings and evidence adduced by both the parties. The plaintiff's witnesses have stated in their evidence that the plaintiff has been in possession of the suit land whereas the witnesses examined on behalf of the defendants have stated that the defendants are in peaceful possession of the suit land and denied the possession of the plaintiff.

6. Relying on the fact that the land in question is recorded in the name of the defendants as per Ex.D-1 and documents of D-2 to D-5 which are the Khasra documents maintained by the Revenue authorities and further considering that in the proceedings initiated by the plaintiff under Section 145 of the Cr.P.C., the property in question was seized from the custody of defendant No.2 vide Ex.D-6 it has been held by the trial Court that defendants were in possession of the suit property and the suit of the plaintiff was dismissed.

The appeal preferred by the appellant was also dismissed after appraisal of the evidence led by both the parties recording the identical findings as of the trial Court.

7. Learned counsel for the appellant submits that the finding of the trial Court as also of the appellate Court are based on documentary evidence that has been adduced by the defendant though the said documents were of the recent past and no documents have been filed by the defendants which substantiates their possession over the suit property from the year 1959-60. In the aforesaid circumstances the courts below ought to have relied upon the statements of the witnesses examined by the plaintiff who have categorically establish the possession of the plaintiff over the suit land since 1959-60.

8. While exercising jurisdiction under Section 100 of the CPC the concurrent findings of fact recorded by both the courts below cannot be interfered with unless the same are perverse. But here both the courts below on the basis of material available on record have arrived at the conclusion that the appellant / plaintiff has failed to prove his continuous and uninterrupted possession over the suit land since 1959-60 till filing of the suit and dismissed the suit of the plaintiff.

9. Another aspect that has been overlooked by both the courts below is that the plaintiff in his examination in chief has categorically stated in paragraph 2 of his deposition that the property in question was allotted to his share in the Chakbandi proceedings in the year 1959 and possession of the same was given to him by the Chakbandi Officer. Thus it was incumbent on the plaintiff to file some documents to show that the land in question was allotted to his share by the Chakbandi Officer, but no such documents was ever filed by the plaintiff during the pendency of the suit. In view of the fact that the plaintiff is claiming title on the basis of possession though he has failed to establish the same during the pendency of the suit, I am of the opinion that there is no substantial question of law involved for adjudication of this appeal and the finding

recorded by the both the courts below regarding possession over the suit property is a finding of fact and it does not call for any interference at this stage.

10. In the result the appeal is devoid of merit and the same is liable to be dismissed. It is accordingly dismissed.

11. However, there shall be no order as to costs.

12. Consequently, M.C.P. No. 221/2005 for status-quo stands disposed of.

Sd/-
Dhirendra Mishra
Judge